

## **REMARKS**

No claims are added, canceled, or amended herein. Claims 10-22, 25, and 27-42 remain pending in this application.

### **Statement of Substance of Interview**

Applicant thanks the Examiner for extending the courtesy of conducting a telephone interview on December 6, 2010. Participating in the interview were Examiner Monikang and Applicant's undersigned representative. The current procedural status of the case was discussed. No agreement was reached.

### **Procedural Status**

A summary of recent prosecution is as follows:

1. The Final Office Action dated September 2, 2010, rejected all pending claims under 35 U.S.C. § 103(a), citing various combinations of Yoshizaki (US Patent 5,870,365), Kamon (US Patent Pub. 20040141446), Ashenafi (US Patent 6072753), Graumann (US Patent Pub. 2004/0264711), Smith (US Patent Pub. 2002/0173864), and Fielder (US Patent 5,845,240).
2. Applicant filed a Response After Final on October 25, 2010 (within two months of the date of the Final Office Action) traversing the rejections. No amendments were made in the Response. The Response After Final was made of record. *See* "Transaction History" available via the PAIR system.
3. The Advisory Action dated November 24, 2010, acknowledged that the Office Action dated September 2, 2010 "was wrongfully made final and should be considered a non-final office action." *See* Advisory Action at 1. The Advisory Action states that Applicant's Response dated October 25, 2010 does not place the application in condition for allowance.

4. During a December 6, 2010, telephone interview discussing the procedural posture of the present case in view of the Advisory Action, the Examiner instructed that the September 2, 2010 action (styled as a “Final Office Action”) should be considered a non-final Office Action, and that the time period for response to the September 2, 2010 action is still running, dating back to September 2, 2010.
5. The Transaction History available on the PAIR system indicates that the September 2, 2010 action is a Final Office Action.

### **Request for Correction of Case Status**

As noted above, the Advisory Action sets forth that the September 2, 2010, Office Action “was wrongfully made final and should be considered a non-final office action.” *See* Advisory Action at 1. As also noted above, the Examiner informed Applicant’s undersigned representative during the December 6 telephone interview that the time period for response to the now-considered Non-Final Office Action of September 2, 2010 is currently running, originating from September 2, 2010.

Applicant respectfully submits that, to the extent that the Examiner may assert that the time for any response by Applicant is currently running from September 2, 2010, such an assertion cannot be proper. As the record demonstrates, Applicant timely filed a compliant response on October 25, 2010, that was entered by the Examiner. *See* “Amendment after Final Rejection” dated “10-25-2010” in “Transaction History” available via the PAIR system. Thus, **Applicant has responded to the September 2, 2010 action**, and any period for response that may currently be running cannot originate from the notification date of the September 2, 2010 action.

To the extent that the Examiner may assert that the Advisory Action dated November 24, 2010, constitutes notice of a Non-Final Office Action that necessitates response, Applicant notes that the PAIR system currently reflects that an Advisory Action was issued after a Final Office Action, and after Applicant’s Amendment After Final. The record does not indicate that a non-final action is currently pending. Thus, Applicant requests issuance of a new Non-Final Office Action to clarify the record.

Alternately, to the extent that the Examiner may maintain that the Advisory Action constitutes notice of a Non-Final Office Action that necessitates response, and that the Examiner's comments made in the Advisory Action may sufficiently establish the record with clarity such that issuance of a new Non-Final Office Action is not necessary, Applicant submits that the time period for Response cannot originate from September 2, 2010 because (1) Applicant has responded to the September 2 Office Action, and (2) Applicant did not receive any correspondence, prior to the Advisory Action dated November 24, 2010, that could be considered notice of a requirement for further response. Thus, the earliest date from which any current time period for response may originate is November 24, 2010.

Finally, Applicant submits that proper disposition of the present case status may be achieved by re-coding the September 2, 2010 action as a Non-Final Office Action, and re-coding Applicant's Response submitted on October 25, 2010 as a Response to Non-Final Office Action. Applicant notes that this course of action may result in the case being placed back in the Examiner's queue for further action.

Respectfully submitted,

Date: February 2, 2011

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